

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRAD HODNETT AND CYNTHIA
HODNETT, derivatively on Behalf of Nominal
Defendant, PIPINGusa, LLC,

Plaintiffs,

vs.

MEDALIST PARTNERS OPPORTUNITY
MASTER FUND II-A, L.P., MEDALIST
PARTNERS, L.P., GREGORY PETER
RICHTER, MARC THALACKER, MARK
THEETGE, MARY GRAYBEAL, and KRAH
USA LLC,

Defendants,

and

PIPINGusa, LLC,

Nominal Defendant.

Case No.: _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendants Medalist Partners Opportunity Master Fund II-A, L.P. (the “Fund”), Medalist Partners, L.P. (the “Partnership”), and Gregory Peter Richter (“Richter”) (the Fund, the Partnership, and Richter together, “Medalist”), by and through their undersigned attorneys, Lowenstein Sandler LLP, hereby serve this Notice of Removal of the above-captioned action entitled *Hodnett et al. v. Medalist Partners Opportunity Master Fund II-A, L.P. et al.*, Index No. 656499/2020 currently pending in the Supreme Court of the State of New York, New York

County (the “State Court Action”), to the United States District Court for the Southern District of New York, with full reservation of any and all rights, claims, and defenses of any nature whatsoever, including but not limited to, defenses related to jurisdiction and venue. Removal is proper for the following reasons:

1. On November 23, 2020, Plaintiffs Brad Hodnett and Cynthia Hodnett, derivatively and on behalf of nominal defendant PIPINGusa, LLC (“Plaintiffs”) commenced the State Court Action by filing: Summons, attached as Exhibit A; Complaint, attached as Exhibit B; proposed Order to Show Cause seeking temporary restraints and a preliminary injunction, with enclosed Memorandum of Law and Affidavit of Brad Hodnett with attachments, cumulatively attached as Exhibit C (without documents filed under seal in the State Court Action); and Request for Judicial Intervention, attached as Exhibit D.

2. On November 24, 2020, counsel for Plaintiffs sent an email to counsel for the defendants in the State Court Action in which counsel for Plaintiffs forwarded a link to the New York Supreme Court’s electronic docket. Counsel subsequently filed an Affirmation of Notice, attached as Exhibit E. Counsel for Medalist then filed a Notice of Appearance, attached as Exhibit F, and a letter in opposition to the Order to Show Cause seeking temporary restraints and a preliminary injunction, attached as Exhibit G. Following a hearing, on November 25, 2020, the Honorable O. Peter Sherwood, J.S.C., in a written decision attached as Exhibit H, declined to sign the Order to Show Cause and denied the preliminary injunction.

3. On December 7, 2020, counsel for Plaintiffs filed a Stipulation to Extend Time to Respond to Plaintiff’s Complaint, attached as Exhibit I, in which Medalist accepted service of the Summons and Complaint as of December 1, 2020, and Plaintiffs and Medalist agreed that Medalist has until January 22, 2021 to answer or otherwise respond to Plaintiffs’ complaint.

4. On December 23, 2020, counsel for Plaintiffs filed an Affidavit of Service as to defendant Mark Theetge, attached as Exhibit J.

5. As of this filing, Plaintiffs have not filed any proof of service in the State Court action as to defendants Marc Thalacker, Mary L. Graybeal, or Krah USA LLC.

6. Exhibits A through J are the only process, pleadings, or orders served to date on Medalist in the State Court Action, exempting documents filed under seal therein as exhibits to the Affidavit of Brad Hodnett.

7. This Notice of Removal is being filed with this Court in the time permitted under 28 U.S.C. § 1446(b). Medalist accepted service effective December 1, 2020. Under 28 U.C. § 1446(b), a notice of removal is due within thirty days after service of the Summons and Complaint. Because December 31, 2020 and January 1, 2021, were court holidays and the clerk's office was inaccessible, Exhibit K, and January 2, 2021, and January 3, 2021, were a Saturday and Sunday, respectively, the thirty-day period for removal is carried to Monday, January 4, 2021, under Federal Rule of Civil Procedure 6(a)(1).

8. Plaintiffs allege eight causes of action in their Complaint. The Fourth Cause of Action is "Misappropriation of Trade Secrets Under Federal and New York Law Against Thalacker, Graybeal, Theetge, and Krah USA," and the Eighth Cause of Action is "Misappropriation of Trade Secrets Under Federal and New York Law Against Medalist Fund and Medalist Partners." Thus, Medalist understands the Fourth and Eighth Causes of Action (the "Federal Claims") present claims under a federal statute, the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*, and therefore "aris[e] under the Constitution, laws, or treaties of the United States" under 28 U.S.C. § 1331. This Court thus has original jurisdiction over the Federal claims.

9. The other causes of action in Plaintiffs' Complaint (the "State Claims") allege causes of action under New York law related to the same events giving rise to the Federal Claims. Specifically, the State Claims and the Federal Claims all arise from Plaintiffs' allegation that defendants Graybeal, Thalacker, and Theetge, with the assistance of Medalist, usurped a corporate opportunity from Plaintiffs so that they and defendant Krah USA could benefit from that opportunity. As such, the State Claims "are so related" to the Federal Claims "that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). This Court thus has supplemental jurisdiction over the State Claims.

10. For the foregoing reasons, this Court has original subject matter jurisdiction over this action because the Federal Claims give rise to federal question jurisdiction under 28 U.S.C. § 1331, and the State Claims are subject to supplemental jurisdiction under 28 U.S.C. § 1367.

11. Removal to this Court is proper under 28 U.S.C. § 1441(a) because this Court has original jurisdiction over the Federal Claims and the Supreme Court of the State of New York, County of New York, in which this action was commenced, is within this Court's district.

12. Other than Medalist, the only other defendant who has "been properly joined and served" is Mark Theetge. Theetge joins in and consents to the removal of this action, as required under 28 U.S.C. § 1446(b)(2)(A). See Exhibit L.

13. The Complaint pleads PIPINGusa, LLC as a nominal defendant only. Plaintiffs do not allege any cause of action against or seek any relief from PIPINGusa, LLC. And Plaintiffs have not filed a proof of service as to PIPINGusa, LLC. There is no obligation to obtain consent to removal from an unserved, nominal defendant. *See Norman v. Cuomo*, 796 F. Supp. 654, 658 (N.D.N.Y. 1992).

14. Concurrently with the filing of this Notice of Removal, Medalist will provide notice, attached hereto as Exhibit M, of this Notice of Removal to Plaintiff and to the Clerk of the Court of the Supreme Court of the State of New York, County of New York, as required by 28 U.S.C. §§ 1446(a) and (d).

15. Medalist's time to answer, move, or otherwise reply with respect to the Summons and Complaint has not yet expired. By filing this Notice of Removal, Medalist does not waive any defenses or objections it may have in this action, including without limitation, lack of personal jurisdiction, improper venue or forum, all defenses specified in Fed. R. Civ. P. 12, or any other defense not explicitly waived.

WHEREFORE, Defendants Medalist Partners Opportunity Master Fund II-A, L.P., Medalist Partners, L.P., and Gregory Peter Richter respectfully request that this civil action be removed from the Supreme Court of New York, New York County, to this Court, and request that this Court assume full jurisdiction over this cause as provided for by law.

Dated: New York, New York
January 4, 2021

Respectfully submitted,

LOWENSTEIN SANDLER LLP

By: /s/ Gavin J. Rooney

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